

**GHANA'S JURY SYSTEM ON TRIAL**  
**THESIS**

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# GHANA'S JURY SYSTEM ON TRIAL

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## ABSTRACT

Civil cases in Ghana are tried by the bench. Criminal cases are also handled by bench trials, except for certain indictable offenses, which may be tried by a judge or jury. Not all serious offenses are tried by jury. And a trend is developing away from jury to bench trials. For example, treason is punishable by death, but the case is determined in a bench trial by three High Court Judges. Robbery, which had been an indictable offense, is now tried by either jury or bench trial at the discretion of the Attorney-General; and prosecutors consistently have been opting for bench trials in robbery cases. Some stakeholders in the Ghana justice system are calling for the abolition of jury trial in all cases, while others are advocating its retention, at least for offenses punishable by death or a life sentence. A third group is also advocating for expanded use of jury trials, but with modifications. The question, however, remains: Whether a jury or bench trial is best suited for Ghana's criminal justice system?

Chapter One includes an introduction and purposes of the thesis.

Chapter Two reviews the jury trial in Ghana and Ghanaians' perceptions of the jury.

Chapter Three reviews the criminal trial systems in Nigeria, Gambia, Sierra Leone, England and Wales, United States, and Germany.

Chapter Four evaluates the criminal justice systems of other countries discussed in chapter three and the extent that those systems might influence criminal justice in Ghana, particularly jury trials.

Chapter Five proposes modification of the Ghanaian jury system that would respond to the needs of the people.

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## I. INTRODUCTION

The objective of this thesis is to examine the relevance of jury trials in the Ghana judicial system and highlight the benefits of jury trials. A jury trial was alien to the Ghana judicial system until 1874, when the Judicature Act of 1874 was passed. Before colonization, Ghana did not exist as a sovereign nation. The area was populated by different autonomous ethnic groups; each having its own justice system. Trial by jury was a foreign concept introduced to the then Gold Coast by the English after they had conquered and colonized most of the ethnic groups. The English introduced both bench and jury trials into the criminal justice system. Successive military governments criticized the jury system, but none actually took steps to abolish it. Ghana has never utilized a jury in civil trials. In the early 1970s, the then military government decided to take a second look at the jury trial as a possible way to cope with the numerous robbery cases in the country. The government subsequently passed The Suppression of Robbery Decree, N.R.C.D. 11, to allow both jury and bench trials in robbery cases.<sup>1</sup> Other laws gave the Circuit Courts (lower courts) jurisdiction to summarily determine robbery cases.<sup>2</sup>

In the early 1980s, when another military government overthrew the constitutionally elected government, the new leaders decided to allow lay persons to participate in the justice system and introduced the tribunal system alongside the regular courts. Under the Public Tribunal Law, P.N.D.C Law 78, the administration of the tribunals was handled by a new body known as the Public Tribunal Board. The public tribunals had nothing to do with the regular courts, which were under the control of the Judicial Council.<sup>3</sup>

Each tribunal was composed of a chairman and two to four panel members, depending on the nature of the tribunal. The district tribunal, which was an inferior tribunal, was mainly composed of a chairman, who might not be a lawyer,

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<sup>1</sup> Suppression of Robbery Decree 1972, N.R.C.D. 11.

<sup>2</sup> Courts' Act, 1971 (Act 372), repealed and re-enacted in the Amendment to Criminal and Other Offenses (Procedure) Act, 646.

<sup>3</sup> See, Public Tribunals Law, 1984 (P.N.D.C.L. 78). *See also*, Public Tribunals (Amendment) Law, 1985 (P.N.D.C.L. 108), and Public Tribunals (Amendment) Law, 1989 (P.N.D.C.L. 213).

and two other lay persons. Another set of tribunals was composed of a lawyer, and two or four lay persons, depending on the nature of the tribunal. The tribunals conducted separate trials of fact and law, and decisions were determined by the majority, even at the appellate level. At that time, the Ghana Bar Association (GBA) strongly objected and directed its members not to appear before the tribunals, proscribing sanctions for any member who flouted its directive. The GBA attacked the tribunal system as illegitimate. But the tribunal system gained legitimacy when it was later incorporated into the 1992 Constitution of the Republic of Ghana, which remains the current constitution of Ghana.<sup>4</sup>

In 2002, all the lower tribunals were replaced with lower courts under the Judicial Service of Ghana Act.

#### ***a. Constitutional Review Committee***

The previous “John Atta Mills” government set up a Constitutional Review Committee to recommend amendments to the 1992 Constitution after holding several public hearings and recommended that the President of Ghana phase out the Regional Tribunals as a superior court. The President accepted the recommendation and steps are under way to amend the Constitution to phase out the Regional Tribunals.<sup>5</sup>

The Constitution of Ghana established jury trial for offenses punishable by death and life imprisonment.<sup>6</sup> After several public hearings, the Constitutional Review Committee did not recommend any amendment of the jury-trial provisions for offenses punishable by death or life imprisonment. The Committee recommended that the law be amended to provide a bench trial for all other offenses.<sup>7</sup>

#### ***b. Need to Review Jury Trial System in Ghana***

This thesis considers whether Ghana should undertake a thorough comparative study of the use of jury trials in Canada and the United States, where

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<sup>4</sup> See, Constitution of the Republic of Ghana, Arts. 125(2); 126 (1) (a) (iii) and (b)

<sup>5</sup> See, Constitution of the Republic of Ghana, 1992.

<sup>6</sup> Constitution of the Republic of Ghana, 1992, Art. 19 (2) (a).

<sup>7</sup> *Id.*, Art. 19 (2) (a).

the right to a jury trial is entrenched; Germany, where jury trial is not used at all; and England and Wales, where the right to a jury trial originated, but now is in decline, at least in civil cases. Further, this thesis suggests the possibility of a compromise in constructing a judicial system that may be more beneficial to Ghana, taking into consideration her peculiar circumstances.<sup>8</sup>

Those advocating the abolition of jury trial in Ghana complain about jury misconduct, undue media and public influence, unreasonable delay, incompetence, the laborious and time-consuming nature of jury trials, and its associated excessive cost. Jurors are given an honorarium of GH¢ 12 (now equivalent to \$6 dollars) for every day they attend court. Every jury is obligated to attend court on every day that the court sits, irrespective of whether a jury is necessary or not. Any proposed case-disposition system must account for these factors.<sup>9</sup> Those supporting retention of jury trial in Ghana as well as those supporting its modification believe that jury trial benefits can be enormous. They assert that the right to a jury trial is a prime indicator of the democratic nature of a country, particularly a third-world country. They further hold that because the jury-trial system was developed on democratic principles and has stood the test of time, the system should not be abolished, but instead only refined to better meet the aspirations of the forefathers who embraced the concept.

This thesis undertakes a comparative analysis of the jury systems in several countries where jury trials are entrenched. This will be done by considering the views expressed by stakeholders in the criminal justice system at various forums, in articles, and books written on the subject by recognized experts outside Ghana. Presently, there is no evidence of either an article or a book on the Ghanaian jury trial.

### ***c. Comparative Study of Justice Systems of Other Nations***

Aside from Ghana, England also colonized Nigeria, The Gambia, and Sierra Leone. These countries are in West Africa and are common law countries. A jury

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<sup>8</sup> See, Neil Vidmar, *Review of Jury Systems Abroad Can Provide Helpful Insights into American Practices*, 73 N.Y. ST. B.J 23 [2001].

trial is provided in both Nigeria and Gambia. In the case of Sierra Leone, jury trial is authorized only in a capital offense case. At present, Sierra Leone is reforming its law, aimed at abolishing capital offenses, and it is likely to do away with the jury system altogether. Nigeria and Gambia once had the institution of jury trial, but it was abolished for different reasons. Nonetheless, several human rights groups are demanding the restoration of jury trials in both countries, at least in capital offense cases, in order to make criminal trials more democratic.<sup>10</sup>

Togo, which shares a boundary with Ghana, permits jury trials in limited types of criminal cases, but an accused person is not presumed to be innocent. It is a unique criminal justice system.<sup>11</sup> La Côte d'Ivoire, another country neighboring Ghana, uses jury trial in a limited sense as it is used only in the Court of Assizes, and the court is convened only when there is the need to do so.

In most common-law countries that use jury trials, the jurors are final arbiters on questions of fact, and appeals primarily focus on asserted errors of law. But in Ghana, jurors' decisions on questions of fact are not final, and the appellate court may set them aside, provided there is evidence on record to show that the judgment was unreasonable.<sup>12</sup> The ability to bypass a jury determination raises another criticism of the jury trial system in Ghana.

#### ***d. First-Hand Impressions of Jury Trial***

The author first visited a court while in secondary school when the General Arts students were sent to observe court proceedings. A murder trial was taking place, giving us the opportunity to observe trial by jury. The judge summed up the law and the facts to the jury and told them to retire and return with their verdict. Five minutes later, they returned to the courtroom. The judge questioned the foreman about the jury's verdict, and the foreman told the judge that the accused person was guilty of murder. The judge probed further to inquire whether the decision was unanimous, and the foreman replied that it was six in favor and one

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<sup>10</sup> See, Daniel Ehigialua, *Trial by Jury: Is it About Time for Nigeria*, Center for the Global Study of Wrongful Conviction 2009. See also, Oceanic Lad, *Gambia: A Call for a Jury Trial, Constitutional Amendment Sought*, FREEDOM NEWSPAPER, July 17, 2010.

<sup>11</sup> See also, *Human Rights in Togo*, en.wikipedia.org/wiki Human-rights-in-Togo.

<sup>12</sup> See, Courts Act, 1993 (Act 459), § 32.

opposed. The judge, who thought that the prosecution had proven the case beyond reasonable doubt, was not pleased with the verdict and declared that it was a hung jury. The defendant was sent to prison as a remand prisoner until the criminal Assizes court was convened the following year. This happened during the time in which the criminal Assizes court was convened yearly.

After the suit had been adjourned *sine die*, the judge explained the term *hung jury* to us and expressed his disapproval of jury trial. He gave several reasons why jury trial should not be used in a developing country in which the illiteracy rate was high and in which the literate citizens are not prepared to serve as jurors, even though the proceedings are conducted in the English language. He confessed that most of the jurors could not express themselves in English and did not understand the proceedings, even though as jurors, they served as the arbiters on questions of fact and therefore determined the appropriate judgment to be passed.

#### ***e. Ghana Judges' Views on Jury Trial***

On 24th October 2011, the Parliamentary Select Committee on the Judiciary visited members of the bench at Koforidua in the Eastern Region to assess the judicial system. One of the High Court Judges in the region, Mr. Justice Efo Kosi Kaglo, recommended that jury trials be abolished. He contended that jurors lacked the minimum education to enable them to understand what was occurring during a trial. He claimed that in the jury trials that he conducted in 2011, the jurors had, in his opinion, wrongly convicted several accused defendants primarily because the jurors were not able to follow and understand the trial.<sup>13</sup>

Another High Court judge, Mr. Justice Henry Kwofie, also stated that when jurors sit for long hours, their ability to concentrate falters and they tend to lose track of the evidence presented at trial. Justice Kwofie warned that such consequences were dangerous and called on his colleague judges to take a second look at the issue.

A member of the Parliamentary Select Committee on Judiciary and a former Deputy Attorney General, Mr. Kwame Osei Prempeh disagreed,

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<sup>13</sup>Kosi Kaglo, *Abolish Trial by Jury*, DAILY GRAPHIC, 24<sup>th</sup> October 2011.



responding that there is nothing wrong with the jury system institution; it is the selection of jurors that causes the problem. Criticism of the jury system attracted much attention after negative stories were published in both print and electronic media.<sup>14</sup> As a result, the majority of members of the public who took part in the electronic media discussions demanded the abolition of jury trials in Ghana.

The present author, before becoming a judge, represented three defendants in three separate criminal appeals in the Court of Appeal. In separate trials by the jury, the three defendants had been convicted of capital offenses and were sentenced to death by hanging. Even though all the appeals were heard in different years and the judgments were given at different times, the Court of Appeal in all three instances overturned the judgment of the juries as unreasonable and against the weight of the evidence. In two of the cases, the accused persons were ultimately acquitted and discharged on the offense of murder.<sup>15</sup> In the third case, one defendant was acquitted and discharged on the offense of murder, and the second defendant was convicted of the lesser offense of manslaughter and sentenced to ten years imprisonment with hard labor.<sup>16</sup>

#### *f. Elements of Comparative Jury-Trial Analysis*

A proper comparative analysis of jury trial systems should include the following:

- (1) Why is jury trial in civil cases on the decline in England and Wales?
- (2) Why is it that in Canada some offenses must be tried by jury, but in other offenses the accused person has the option of bench or jury trial?
- (3) Why is jury trial very successful in the U.S.A.?

This thesis compares the composition of juries in Canada, U.S.A., England, and Wales, where in most cases; twelve people sit as jurors in a

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<sup>14</sup> *Id.*

<sup>15</sup> *See*, Yaw Nimo Kwakorakwa v. The Republic CA 2010 (unreported) and Godfred Sammy Amissah v. The Republic CA 1998 (unreported).

<sup>16</sup> Gabriel Kwao Bosso v The Republic CA 2007 (unreported).

jury trial.<sup>17</sup> On the other hand, a jury consists of seven jurors in Ghana. The thesis will also explore whether the size of a jury has any impact on the jury verdict or its perceived accuracy. Other factors that may influence the effectiveness of a jury trial will be explored, including the eligibility requirements of jurors, jury selection, peremptory challenges, challenges for cause, and how instructions are given to jurors by the judge.

The thesis also examines Ghanaians' understanding of jury as provided by Clause 39 of the Magna Carta, which requires trial for accused persons by their equals and exempts certain categories of persons from jury service. In Ghana, professionals including judges and magistrates, legal practitioners in actual practice, court officials, registered medical practitioners, dentists and pharmacists in actual practice, schoolmasters actually engaged in teaching in a school, priests and ministers of religions, police officers, prison officers and wardens, officers and other members of the Armed Forces on full pay, and other persons are exempted from jury service under section 207 of the Criminal and Other Offences (Procedure) Act, 1960, Act 30.

The thesis will also discuss why an offense like defilement, which has the same maximum sentence as rape, commands a bench trial, while rape, whose minimum sentence is lower than that for defilement, is tried by a jury. This and other comparisons are useful in making an informed decision as to whether a first-degree offense should be tried by bench or, whether the accused person should be given an option to choose either a bench trial or a jury trial as is the case for offenses in Canada and other jury trial countries.<sup>18</sup>

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<sup>17</sup> In the USA, the composition of juries varies from state to state. In the State of Florida, juries consist of six people. Twelve jurors are required only for criminal trials involving capital cases, where the death penalty is applicable. In the recent case of State of Florida v. George Zimmerman, the jury consisted of six members and four alternates. FOX NEWS, June 11, 2013. In England & Wales, the Crown Court and the High Court in most cases start with a twelve member jury (section 17 of the Juries Act 1974) and in respect of County and Coroner's Courts, the jury is composed of eight and between seven and eleven respectively. *See*, § 67 of the County Court's Act 1974; §§ 17 (2) of the Juries Act 1974 and the Coroner's Act of 1988.

<sup>18</sup> Terry Skolnic, *The Jury Systems in Canada*.

The preceding discussion shows why it has become imperative that Ghana take a second look at its jury trial system. This thesis will identify weaknesses associated with jury trial, which could be corrected by an amendment to the Criminal and Other Offenses (Procedure) Act, 1960, Act 30, which governs criminal trial proceedings in Ghana.

Another important issue the thesis will address is the question: what can Ghana do to improve its jury trial system to meet the needs of the people by achieving speedy and effective justice that would eliminate undue incompetence, delay, and unnecessary expense?

The advantages and disadvantages of jury trial will be analyzed to provide a perspective as to whether jury trials should be retained, modified, or abolished in Ghana. The thesis will further examine and evaluate the various reasons assigned by those advocating the abolition of the jury system in Ghana.

The thesis will review commentary about countries that have abolished the jury trial system. Several Human Rights groups have criticized countries which at one time had jury trial, but abolished it without any justifiable cause. Countries such as Nigeria and Gambia have been criticized for not being democratic because they have denied the populace the right to take part in jury trials, which can serve as a safeguard for the people against government abuse.

Another type of jury trial, which people who advocate the abolition of jury trial in Ghana have not considered, is Court Martial. Court Martial is a trial proceeding prosecuted against members of the armed forces. It is presided over by a judge who is the trier of law and members of the armed forces, who serve as jurors. The defendant has the right to appeal a conviction to The Court Martial Court of Appeal on both questions of fact and law. The composition of the Court Martial Court of Appeal is made up of three justices selected from the justices of the superior court by the Chief Justice. The defendant has the right to appeal the judgment of the Court Martial Court of Appeal to the Supreme Court. The thesis examines some of the judgments of the Court Martial and undertakes comparative analysis of the two systems.

## **II. A CRITICAL LOOK AT JURY TRIALS IN GHANA**

This chapter focuses on criminal cases in Ghana, particularly those which are conducted by a jury trial, and the Ghanaian common perception about jury trial. It further compares and contrasts jury trials and court martial trials.

There is no right to a jury trial in a civil case in Ghana. All trials are bench trials. In some of the civil cases, however, the judge may opt to sit with experts (assessors). The assessors' opinion has only a persuasive effect and is not binding on the judge.

### ***a. Jurisdiction of Courts with Criminal Jurisdiction***

Criminal cases can be tried in Ghana under several different modes, including: (a) bench trial by a professional judge; (b) bench trial by a non-professional judge (referred to as a "career magistrate"); (c) a professional judge sitting with two or four non-professional judges; (d) a professional judge with the aid of assessors; (e) three professional judges, and; (f) a professional judge and a seven-member jury.

The district and circuit courts, regional tribunals, and high courts in Ghana have original jurisdiction in criminal cases. The jurisdiction of every court is determined by law, and if jurisdiction is not expressly conferred on a court by a statute, it cannot entertain any matter brought before it.<sup>19</sup>

The courts in Ghana are categorized into lower and superior courts.<sup>20</sup> The lower courts with criminal jurisdiction are the district courts, juvenile courts, and circuit courts. The district court is the lowest court. Every political district of Ghana has a district court, under Section 45 of the Courts Act, 1993, which expressly provides that there shall be in each District the District Courts that the Chief Justice may determine.

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<sup>19</sup>Chief Timitimi vs. Amabebe (1953), 14 (WACA) 374.

\*Career Magistrates are graduates from the universities in any field, except law. They must complete two years of education in basic law at the Career Magistrate Training School. They retire from office at the age of 60.

<sup>20</sup>Constitution of the Republic of Ghana, 1992, Art. 126.

A District Court is composed of a single judge who is either a professional magistrate or a career magistrate. Both officers exercise equal jurisdiction. There are 216 political districts in Ghana. The district courts do not have jurisdiction over offences whose sentence may exceed two years, and any offence punishable by a fine exceeding 200 penalty units.<sup>21</sup> The district court conducts pretrial committal proceedings in indictable cases.

The Juvenile Court is composed of a magistrate (a professional or career magistrate) with two persons, a social welfare officer, and one person appointed by the Chief Justice on recommendation of the social welfare director. The Court exercises jurisdiction in matters involving a juvenile, defined as persons age 12 years and older but below 18 years of age. In Ghana, children younger than 12 years of age are considered to be *doli incapax* and cannot be tried for any charged criminal offense. If a juvenile is jointly charged with an adult, the court with jurisdiction over the adult assumes jurisdiction over the juvenile. The juvenile court sentences the juvenile if the juvenile is convicted.<sup>22</sup>

A professional judge presides over the Circuit Court. The court has jurisdiction in all criminal cases, except treason, offences punishable by death, and offences triable on indictment.

The Regional Tribunal, High Court, Court of Appeal, and the Supreme Court are the superior courts with criminal case jurisdiction.<sup>23</sup> The Regional Tribunal has original jurisdiction in economic criminal offences.<sup>24</sup> It does not have jurisdiction over any civil case. It is composed of a professional judge, who is called the chairman, and two or four panel members (persons without any formal legal training), and their decision is determined by the opinion of the majority of the members who sit on the case. The Regional Tribunal lacks jurisdiction to entertain any criminal offences if the trial involves a jury or assessors.

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<sup>21</sup>Courts Act, 1993, Act 459, § 48.

<sup>22</sup> Juvenile Justice Act, 2000, Act 653, § 18.

<sup>23</sup>*Id.*, §§ 2, 11, 15; Courts Act, § 24

<sup>24</sup>Avalifo & Yebbi vs. the Republic, [2000] SCGLR 149.

The High Court exercises appellate jurisdiction over criminal appeals from the lower courts. It also has original jurisdiction concurrent with the district and circuit courts in criminal matters with respect of certain summary trials. The High Court, when exercising its appellate and summary jurisdiction, is composed of a professional judge. The High Court may also be composed of a judge with the aid of assessors, but the opinion of the assessors does not bind the judge. In the case of treason, the High Court is composed of three justices of the court. The High Court can sit with jurors in a case involving an offence punishable by death and an offence triable on indictment. The judge sits as a trier of law, while the jurors sit as triers of fact. The jurors render the court's verdict.<sup>25</sup>

The Court of Appeal hears criminal appeals from the regional tribunals and the High Court as of right, except that if a decision is rendered in a treason trial, it is appealable from the High Court directly to the Supreme Court. Criminal appeals from the Court of Appeal go to the Supreme Court as of right.

#### ***b. Types of Offences***

Offences are categorized into misdemeanors, second-degree felonies, first-degree felonies, and offences punishable by death.

Unless otherwise specified by law, a court may sentence a person convicted of a: (1) misdemeanor offence to a term of imprisonment no greater than three years; (2) second-degree felony to a term of imprisonment no greater than ten years; and (3) first-degree felony up to life in imprisonment.<sup>26</sup>

The offences that are tried on indictment are: (1) offences punishable by death, including murder and smuggling of gold and diamonds; (2) offences declared to be first-degree felonies by a statutory enactment, including rape or the use of an offensive weapon, and; (3) if the enacting law specifies indictment. In some cases, offences may be tried summarily or on indictment. The choice lies with the Attorney General. An example of this type of offense is robbery. Act 646 provides that robbery may be tried either summarily or on indictment. All indictable offences are tried by a justice of the High Court and a

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<sup>25</sup>*Id.*, § 281, Act 30, §§ 282; 183.

<sup>26</sup>Avalifo & Yebbi, *supra*, note 24; Act 30, §296.

seven-member jury. In an indictable case, a district court arraigns the defendant for pretrial committal proceedings, and if the court commits the defendant into custody, then the High Court assumes jurisdiction.

Depending on the indictable offence, a court may impose four different types of punishment on the defendant. They are: (1) death sentence; (2) imprisonment; (3) fine or detention (for juveniles), and; (4) payment of compensation.<sup>27</sup> If a juvenile commits murder, the juvenile is not tried on indictment, but instead is tried summarily by a High Court, consisting of a High Court judge. If convicted, the juvenile is detained in a juvenile correction institute. But if a juvenile is charged jointly with an adult for murder, the juvenile appears before the District Court for committal proceedings, and if the court committed the juvenile, the juvenile would be indicted before the High Court for trial. On conviction, the juvenile is sent to the Juvenile Court for sentencing.

### *c. Trial by Assessors*

A judge may sit with the aid of assessors in any indictable, non-capital offense. Either the defendant or the Attorney General may request the court to appoint assessors on a showing that that the ends of justice would be served if, instead of a jury trial, the case were tried by the judge with the aid of assessors. The judge has discretion to appoint the assessors. In practice the courts rarely try cases with the aid of assessors, even though the Criminal and the Other Offences (Procedure) Act expressly authorizes a trial with the aid of assessors. To qualify as an assessor, a person must be literate in the English language and must be a resident in Ghana between the ages of 25 years and 60 years. The candidate must also qualify to serve as a juror.<sup>28</sup> Assessors must sit throughout the trial, and they must give an oral recommendation, but their recommendation does not bind the High Court judge.<sup>29</sup> The decision-making power of the court is exclusively vested in the judge. If assessors are used, the court must appoint at least three. The

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<sup>27</sup>*Id.*, Act 30, § 294.

<sup>28</sup>*Id.*, Act 30, § 227.

<sup>29</sup>Act 30, § 264.

defendant may object to the inclusion of an assessor on the panel, and the judge may disqualify an assessor for reasonable and substantial grounds.

#### ***d. Trial by Jury in Ghana***

##### ***i. Introduction***

Article 19 of the Constitution of Ghana, 1992, expressly provides for jury trial as part of the general provisions for a fair trial. Specifically, Article 19 (2) (a) states that:

A person charged with a criminal offence shall in the case of an offence other than high treason or treason, the punishment for which is death or imprisonment for life, be tried by a judge and jury and where the punishment is death, the verdict of the jury shall be unanimous; and in the case of life imprisonment, the verdict of the jury shall be by such majority as Parliament may by law prescribe.

This provision makes it explicit that a defendant charged with an offence punishable by death or life imprisonment must be tried by a judge and a jury. The operative word of Article 19 being “shall”— a trial of an offence which is punishable by death or life imprisonment except in the case of treason or high treason can only be valid if it is held by a judge and a jury.

The Constitution specifies the form of the verdict. In a case involving an offence punishable by the death sentence, the jurors’ decision must be unanimous, and in a case involving an offence punishable by life imprisonment, the jurors’ decision must be by majority vote.

##### ***ii. Juror Qualification***

Under the present law, any person, including a woman, who is literate in the English language, a resident in Ghana, between 25 years and 60 years of age, never convicted of treason, felony, or any offence involving a felony is eligible to serve as a juror. A person granted a presidential pardon is also eligible to serve as a juror.<sup>30</sup> Until enactment of Section 2 of the Criminal Procedure Code

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<sup>30</sup> *Id.*, Act 30, § 207.



(Amendment) Decree, 1972 (N.R.C.D. 121) in 1972, a woman was ineligible to serve as a juror.<sup>31</sup>

### *iii. Persons Exempted from Serving as a Juror*

The law exempts a significant group of individuals from juror service. The exempted categories of citizens include: The President; Vice President; Speaker and Members of Parliament; judges and magistrates; coroners and their deputies; court officers; legal practitioners, registered medical officers, dentists, and registered pharmacists in active practice; prison officials and wardens; police officers; and officers and other members of the Armed Forces on full pay.

Other exempted categories of officials include: public officers, other than those engaged in clerical duties employed in the medical, postal, and telecommunications industries; customs, excise, and preventive service or Ports and Harbours Authority officials; and officiating priests, pastors, or ministers of their respective religions. The exemptions extend to: school masters engaged in teaching in a school; persons employed in a public electric telegraph office or at an electric power station; diplomatic and consular representatives and the salaried functionaries of foreign governments; editors of daily newspapers; and other persons exempted by the Chief Justice.

### *iv. Preparation of Lists of Jurors*

District magistrates are responsible for preparing lists of eligible jurors every May and November and on any other date the Chief Justice authorizes.<sup>32</sup> The lists consist of eligible jurors who live within four miles of the town where the session is to take place. Alternatively, the Minister for Justice and Attorney General may prescribe in a gazette publication the area within which the jurors should be selected. The magistrates may require prospective jurors to provide full names, occupations, and places of abode. It is an offence for anyone to refuse to

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<sup>31</sup>*Id.*, Criminal Procedure Code (Amendment) Decree, 1972 (N.R.C.D. 121).

<sup>32</sup>Act 30, § 207.

comply with a magistrate's directive or to respond to requests for information necessary to compile the lists of jurors.<sup>33</sup>

The magistrates post the list in the court house for three weeks and listed prospective jurors may apply in writing to have their names struck or added. The magistrate revises the final list in a public forum. Prospective jurors remaining on the list are obligated to attend public sittings. The final list is forwarded to the High Court registrar and constitutes the official jurors' list for the year. The list is revised every year through the same process.

The sheriff or the registrar may prepare a temporary juror list if one has not already been prepared by a magistrate.<sup>34</sup>

***v. Formation of Jury Panel***

The sheriff writes the name of every juror on a separate sheet of paper and keeps them in a box. The names of the jurors who are to sit on a particular case are then drawn randomly from the box until the required number is selected. During the draw, the court takes into consideration peremptory rights and challenges for cause.<sup>35</sup>

***vi. Peremptory Rights and Challenges for Cause***

Only the defendant may exercise peremptory rights challenging a juror. The defendant has three peremptory rights to excuse a juror without assigning any reason. The right may be exercised by the defendant personally or by the defendant's lawyer.

The defendant, but not the prosecutor, may challenge a juror for cause, based on four grounds, including: (1) presumed or actual prejudice or partiality; (2) personal cause and other factors such as old age, deafness, infirmity, insanity or ill health; (3) conviction of any disqualifying offence, and; (4) lack of proficiency in the English language. If the defendant challenges a juror for cause and the prosecutor objects, the judge decides whether to retain the juror. If a party challenges a jury for cause and the prosecutor fails to object, the prospective juror

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<sup>33</sup> Act 30, § 210.

<sup>34</sup> Act 30, § 221.

<sup>35</sup> Act 30, § 214.

is excused, and the selection process continues until the seven-member panel is selected.<sup>36</sup>

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<sup>36</sup>Act 30, § 250; 251

### ***vii. Jury Foreman***

The jurors choose their foreman among themselves after they have been sworn in to sit on a case.<sup>37</sup> The jurors must choose their own foreman as their spokesperson, but if they cannot select one within a reasonable time, the Court appoints the foreman. All communication between the court and the jury can be done only through the foreman. The foreman asks the court questions on behalf of the jurors, who typically write their question on a sheet of paper and hand it over to the foreman for transmission to the court. The foreman announces the jurors' decision.

### ***viii. Questions of Law***

If a legal objection is raised in the course of a trial, the court must excuse the jurors and determine the issues. The legal objections may pertain to the admissibility of evidence and exhibits. If the prosecution intends to tender the defendant's "caution statement" and the defendant objects on the grounds of involuntariness, the court must conduct a mini-trial. In such a case, the jurors are excused, returning after the court has ruled on the statement's admissibility.

### ***ix. Summing Up***

The judge, who is the trier of law, sums up the evidence to the jurors after the close of the evidence and after the lawyers have addressed the court. The judge must address all relevant laws and available defenses.<sup>38</sup> The judge's summation is subject to error on a showing of misdirection and non-direction, which may color or affect the jurors' decision.

### ***x. Deliberations and Decision***

The jurors retire after the judge sums up the evidence and relevant laws to deliberate on the evidence. The jurors are expected to omit extraneous matters from their discussion. The jurors are forbidden from speaking to any non-juror without leave of court when they retire to deliberate.<sup>39</sup> The jurors are responsible for returning a verdict on all counts, and if the jurors are not unanimous in their

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<sup>37</sup> Act 30, § 253.

<sup>38</sup> Act 30, § 275.

<sup>39</sup> Act 30, § 282.

verdict, the foreman must inform the court of the actual votes on each count. A judge may request the jury to continue deliberations if they are unable to reach a unanimous decision.

If the jury members are unable to reach a unanimous decision after further deliberation, they must inform the court. In the case of a capital offence, the verdict must be unanimous, and if there is any dissent, it becomes a hung jury, and the jurors are discharged. In this instance, the defendant may be tried on the same offences or any other suitable offence after new jurors have been selected. In all other cases, the majority decision of not less than five is sufficient.

#### *e. Criticism of Jury Trial*

##### *Incompetent Jurors*

The primary criticism of jury trial concerns the perceived incompetence of jurors. Justice Henry Kwofie theorizes that in his experience jurors sitting for long hours tend to forget about the evidence which was admitted earlier in the proceeding. He suggests that a trial include frequent breaks and not extend for too many hours.<sup>40</sup>

Another High Court Judge, Justice Efo Kossi Kaglo, advocates the abolishment of the jury system altogether. He contends that jury trials result in too many serious miscarriages of justice. Even though there is evidence clearly supporting conviction, he says, that in his experience jurors all too often surprisingly acquit. On the other hand, if there is lack of evidence to convict, the jurors nonetheless convict. He believes that these errors in judgment arise from a lack of necessary education, which makes it difficult for jurors to fully understand and follow the trial.<sup>41</sup>

At a workshop organized at the Kwame Nkrumah University of Science and Technology Kumasi, a Principal State Attorney with the Attorney-General's Department contended that the jury trial has outlived its usefulness and advocated its abolishment. She also believed that jurors were too often not very literate in the

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<sup>40</sup>DAILY GRAPHIC, 25<sup>th</sup> October, 2011 and further published in MODERN GHANA WEB, 25<sup>th</sup> October, 2011.

<sup>41</sup>*Id.*, DAILY GRAPHIC.

English language and did not fully understand the proceedings. She also criticized jury trials for adding to delay.<sup>42</sup>

Still another judge, who sat at the Assizes in Tamale, also concluded that in his experience jurors become bored and lose concentration when they sit for long hours. He believes that because jurors are not formally trained in the law, the trial should have breaks every two hours. But his main concern about jury trial is the number of juror complaints about threats from the defendant's relatives or friends. He said that in many small towns most people know one another. The defendant's relatives or friends can easily identify the jurors and threaten or otherwise intimidate them.

Adequate funding for operating the jury trial system is a perennial problem. In March 2013, the jurors in a case tried in Koforidua boycotted court proceedings because they were not paid the required allowances that should have been paid to them by the Judicial Service, which were in arrears for several months. In April 2013, jurors in Cape Coast issued a similar threat.

In Cape Coast, many jurors had been sitting for over four years. The majority of them were public workers who had retired at the age of 60 years, and who were sitting on partly heard cases.<sup>43</sup> They had left their duty posts on

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<sup>42</sup>[www.myjoyonline.com](http://www.myjoyonline.com); 6<sup>th</sup> August, 2010. According to her, the selection process for juries is skewed in favor of illiterates and called for a Constitutional amendment to abolish jury trial. In the case of Bosso vs. the Republic [2009] SCGLR 420, at the High Court, the appellant and another were convicted for murder but the conviction for murder was set aside by the Court of Appeal. The Appellant was convicted for manslaughter and the other accused person was acquitted and discharged.

<sup>43</sup>It is contrary to section 213 of Act 30, which requires the District Magistrate to revise the list of jurors. The main pitfalls for jury trial usually pertain to the way jurors are selected. Sections 209 and 210 of The Criminal and other Offences Act, 1960 (Act 29) prescribes that the lists of jurors should be prepared by the District Magistrates and should be revised every year. Even though the law vests the power of selection of jurors with the District Magistrates and the temporary list with the Registrar or the Sheriff of the High Court, they have delegated that power to employers and chief executives of some institutions. The Magistrates do

retirement and were demanding daily transportation to enable them to commute from their respective homes at locations like Madina, Kasoa, and Kaneshie.

An attorney with the Attorney Generals Department suspected that jurors associated with a particular defendant often improperly influence their colleague jurors to return an acquittal verdict. He cited a case he prosecuted recently as an example. According to him, despite overwhelming contrary evidence, the jurors acquitted the defendant. He learned about a week later that two of the jurors lived in the defendant's neighborhood and probably influenced the other jurors to acquitted the defendant.

***f. Jury Selection Mode***

District magistrates or the High Court Registrar must scrutinize every prospective juror. The jurors must be literate in the English language to enable them to understand the court proceedings, which are always conducted in English. But a trial witness may speak any local language. Testimony is translated into English by the Court Interpreters. In some cases witnesses who are foreigners and are not literate in English are permitted to give evidence in their language. The Courts provide interpreters for such people.

***g. Excusal from Juror Service***

The substantial number of categories of officials, officers, and employees exempted by law from juror service creates many opportunities for individuals to be excused from jury service. Often the best qualified prospective jurors take

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not invite self-employed and employees of private companies to serve as jurors even though it is not forbidden by any law. The public institutions and organized transport union such as Ghana Private Road Transport Union are written to by the District Magistrates or the Registrars of the High Court to nominate some people to serve as jurors. They usually nominate people with minimum educational backgrounds whose services are not important to serve as jurors every year.

advantage to excuse themselves from jury service, leaving minimally qualified jurors to comprise most juries. Questionable examples are numerous.

On 15th February, 2001, the Department of Co-Operatives in the Northern Region submitted the names of seven persons to serve as jurors, five of which were low-level employees. The letter states thus:

15th February, 2011

**JURORS LIST FOR 2010 TO 2011 LEGAL YEAR**

*Reference your letter No. DC. 71/09/344/11, I submit to you  
staff list of the Department of Cooperatives in the Regional  
Office for your study and further action.*

NAME	AGE	RANK	HOMETOWN
1. Mohammed Fuseini	58	Regional Director	Sagnarigu
2. Wemah Aliatu	51	Metro Director	Tamale
3. Adam Rufai	25	Asst. Coop. Officer	Tamale
4. Latiff	58	Messenger	Dorimon
5. Yaro Rose	48	Typist GD 1	Bolga
6. Fati Ziblim	41	Typist GD 1	Tamale
7. Abukari Iddi	41	Messenger	Tamale

During the preparation of the 2012 jurors' lists at Tamale, the Ghana Urban Water Limited company nominated a technical assistant to serve as a juror. When the High Court Registrar wrote to invite him, his employers replaced him with a caretaker whose educational qualification was minimum and whose employment



services could easily be dispensed with. Relevant portions of the letter are set out below:

**RE: JURORS**

*We refer to your letter No. H. CJ/Vol. 3/10/935 of 20 January, 2011, which was received on Friday, 20 January, 2012 and indicate as follows:*

*1. That Ninson Eric, Technical Assistant (production) is a key staff stationed at Dulan Headworks and due to the sensitive nature of his functions, we are unable to release him as this would negatively affect water production. This notwithstanding, we wish to replace him with Mr. Abdul Samad Alhassan, caretaker stationed in Tamale.*

*2. Mr. Augustine Addo, Technical Assistant (WQA) on the other hand is in Quality Water Assurance Department which is woefully understaffed. In view of this development, we regret to indicate our inability to release him since this would compromise on our water quality....’’<sup>44</sup>*

Another letter from the Forestry Service Division, Cape Coast, also provided thus:

*Dear Sir,*

**RE: LIST OF STAFF BOTH MALE AND FEMALE**

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<sup>44</sup>The letters show that persons with minimum levels of education who are not very literate in English are submitted as jurors by their employers. These letters are from The Department of Co-Operatives in the Northern Region, Ghana Urban Water Limited in the Northern Region and Forest Services Division in the Central Region respectively.

*Please find below the list requested from your recent communication to us with reference to your letter DMC/836/F42/2010 dated 26<sup>th</sup> May 2010.<sup>45</sup>*

NAME	AGE	RANK	PLACE OF ABODE
1. MR. ERIC QUANSAH	43	STORE KEEPER	PEDU
2. MS. HANNAH TETTEH	33	SECRETARY	NKANFUA
3. MR. BENJAMIN ENCHILL	41	SECURITY	1 <sup>ST</sup> RIDGE
4. MR ADOLF NII LOKKO	33	DRIVER	NKANFUA
5. MS ELLEN SHERBRAH	50	FOREST GUARD	ELMINA

In all the ten Regional Capitals in the country, invitation letters are sent to the public institutions whose members have not been exempted from serving as jurors, and to the Ghana Private Road Transport Union, which submits the names of people who are to serve as jurors. An example of the letter written by the Registrar of the District Court, Cape Coast, states:

*5th November, 2012*

*Dear Sir,*

**Jury Service List 2013/2014**

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<sup>45</sup> In the case of the 2011 Assizes, the Department of Social Welfare at Tamale released three junior officers from jury service. The Department voluntarily submitted their names. It is contrary to the law which requires the District Magistrate to select the jurors. Their designations are as follows; Assistant Technical Instructor, Work Superintendent and typist grade 1.

*By virtue of section 209 of the Criminal Procedure Code (Act 30). I am directed by the District Magistrate to request you to furnish us with a list of male and female staff under your supervision who can read, write and understand English Language and are between the ages of twenty five years to sixty years to serve as jurors....."*

The institutions respond by submitting names of mostly junior service staff who cannot effectively read, write, and understand the English language.<sup>46</sup> In several cases, personal contact is made with the authorities before the names are sent. The prospective jurors are sometimes interviewed, and due to the fact that it is difficult to get competent jurors, those who prove to be average are selected to serve as jurors. In some regions such as the Central Region, Brong Ahafo, and Western Region, the names submitted by the institutions are accepted without any interview, because it is difficult to get jurors.

In the Ashanti Region, the High Court Registrar and the Attorney General's Department's staff interview prospective jurors. In the Greater Accra Region, an informal interaction with the jurors is undertaken by the High Court Registrar, and no one has ever been disqualified on the grounds of not being very literate in the English language.

This mode of jury selection often results in poorly qualified juries. It is contrary to law, which clearly exempts individuals from service only on health grounds approved by the Court or under one of the excepted categories.<sup>47</sup>

Competent individuals in the private sector are also unilaterally excluded by the district magistrates from serving as jurors. Many magistrates do not attach any

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<sup>46</sup>The District Magistrates also relinquish their rights to select competent jurors to the Heads of some institutions and they determine the workers whose services could be easily dispensed with.

<sup>47</sup>See the response to the letter with reference *No H. CJ/Vol. 3/10/935 of 20th January, 2011. The employers determine their employees who should serve as jurors.*

importance to this national exercise, and juror selection is often exclusively done by their registrars.<sup>48</sup>

About 18 percent of the institutions and departments that submit employee names for jury service continue to submit the same names year after year, so that individual jurors have become “permanent jurors.” The following letters from three different Departments attest to this fact. They are as follows:

Dear Sir/Madam:

**RE: JURY SERVICE LIST FOR 2013/2014**

*In reference to the above subject and previous communication, we would humbly like to retain the below mentioned staff members who are already serving as jurors under your jurisdiction.”<sup>49</sup>*

Another letter from A.M.E. Zion Educational Unit dated 16<sup>th</sup> July 2010 states thus:

*... I regret to inform you that the office is currently understaffed and could not nominate any person to represent this office. Our representative in the person of Mr. Albert Otsibah is due for retirement in August 2010. We sincerely regret for the inconveniences this might cause but promise to send a representative whenever the staffing situation is improved.<sup>50</sup>*

Other institutions and departments refuse outright to send employees to serve as jurors, often claiming understaffing as a reason. Two of such letters are as follows:

**Re: Jury List – 2013/2014**

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<sup>48</sup>See the letter written by the District Magistrate on 5<sup>th</sup> November 2012. The employers are given the option to submit the names of the employees they would like to serve as jurors. It is contrary to law as the law rather gives this power to the District Magistrates.

<sup>49</sup> Forestry Commission, Ref. No. G60.S.1/37

<sup>50</sup> A.M.E. Zion Educational Unit, Ref:GES/CR/AMEZ/JSL/V.1/7 dated 5th March 2013.

*We refer to your letter No. DMCC244/FDC42/2013 dated 5<sup>th</sup> March 2013 on the above subject matter and inform you that due to lack of staff in this secretariat, we are unable to get you a member to serve as a juror.<sup>51</sup>*

Another letter with reference No. GES/CR/AMEZ/JSL/V.1/10 states:

**RE: Jury Service List 2013/2014**

*...wish to state that the unit is understaffed and this will not enable us to provide a jury service list for 2013/2014.<sup>52</sup>*

Another common criticism of a jury trial is that it is too expensive, principally because of the daily allowances paid to jurors. Clearly a jury trial is a national assignment, which requires funding.<sup>53</sup>

***h. Ineffective Juror Lists Undermine Jury Trial Legitimacy***

Jury trial is an aspect of democratic governance and reasonable costs to fund it are assumed. But if jury corruption is a common perception, its legitimacy would be undermined. Safeguards such as proper background checks can help ensure competent jurors. The safeguard is critically important in small towns where the likelihood of jurors having a close relation with a defendant is high. Officially, there is little evidence of jury corruption and only a single instance in which a juror was convicted for attempting to influence a judge. Nonetheless it is difficult to precisely determine the degree of corruption among jurors.

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<sup>51</sup> Ghana Private Road Transport Union of Trades Union Congress with Ref. No.CRS. 66/vol. 2.57.

<sup>52</sup> A.M.E. Zion Educational Unit, Ref: GES/CR/AMEZ/JSL/V.1/10 25th March 2013.

<sup>53</sup> *Id.*, Act 30, § 258. The law provides that where jurors have retired to consider their verdict and the case is adjourned, accommodation custody and refreshment should be provided for the Jurors.

\*The jury selection in Ashanti Region, which is done by the Registrar and the staff at the Attorney General's Department is unfair because the Attorney General is a party in the criminal prosecution. It gives jurors the wrong impression that they are under the Attorney General's control.

The other attack on jury trial is delay. Some of these delays, for example, may be as a result of a juror's incapacitation. In such a situation, irrespective of the stage of the case, the suit starts *de novo* after another juror has been selected. Another example of delay can occur when a juror dies and judgment has not been entered and the entire proceeding must be started afresh. In addition, more delays are caused by incompetent jurors, the court, the accused person and the prosecution.

*i. Court Martial Proceeding as Possible Model*

A court martial proceeding is duly composed of a superior court judge and a panel of three or five soldiers, two of whom are officers. The type of officers who sit on a case depends on the defendant's rank. The judge is a trier of law, and the soldiers are triers of fact as a panel. The soldiers' decision is by majority vote. The panel exercises jurisdiction over soldiers who have committed offences prescribed by the Armed Forces Act, 1962.<sup>54</sup>

Court Martial is a form of a jury trial, and because it is composed of competent men, women, and officers of the Ghana Armed Forces, it is viewed as a superior model. The soldiers are not lawyers. The prosecutors are soldiers who are lawyers. The defendant is entitled to a lawyer of his or her choice. The panel members may ask questions during the trial and each member is entitled to ask questions directly. After the close of evidence, the prosecutor and the defendant's lawyer may address the court. If the defendant is self-represented, the prosecution will address the court. The judge sums up the facts and the law, after which the panel retires to deliberate in secret. The panel's decision is by majority, except if the offence is punishable by a death sentence, in which case the verdict must be unanimous.

Court Martial is seen as one of the best models of trial by a judge and lay persons. A convicted defendant is entitled to appeal to the Court Martial Court of Appeal.<sup>55</sup>

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<sup>54</sup>Armed Forces Act, 1962, Act 105

<sup>55</sup>The Republic vs. Oduro [2007/2008] 2 SCGLR 839. The Supreme Court held that an appeal from the Martial Court of Appeal does not go to the Supreme Court. The court further held that the Court Martial Courts are lower Courts and are subject to the supervisory jurisdiction of the High Court.

Based on the success of jury trial in a Court Martial, a jury trial in criminal lay cases could be significantly improved if the quality and competency of juror were increased.

***j. Double-Jeopardy Distinction***

A major distinction between a jury trial and a trial by a court martial is found in Article 19 of the Constitution, 1992. It generally prevents a defendant tried in a lay case from double jeopardy in a subsequent criminal proceeding, but does not extend the same protection to a defendant tried in a Court Martial. Thus, a defendant who has been tried by a lay court is entitled to the defense of *autrefois* acquit or *autrefois* convict, upon a subsequent trial on the same offence or charge. But a defendant tried by a Court Martial cannot use the same defense in a subsequent trial of the same offence. Article 19 (7) states that:

No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted, shall again be tried for that offence or for any other criminal offence of which he could have been convicted at the trial for the offence, except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

Article 19 (16) (b) also provides that:

Nothing in, or done under the authority of, any law shall be held to be inconsistent with or in contravention of clause (7) of this article, to the extent that the law in question authorises a court to try a member of a disciplined force for a criminal offence notwithstanding any trial and conviction or acquittal of that member under the disciplinary law of the force, except that any court which tries that member and convicts him shall, in sentencing him to any punishment, take into account any punishment imposed on him under that disciplinary law.

Thus, unless a Superior Court orders a trial de novo upon an appeal or review proceedings, Article 19 (7) provides an accused with a complete defense if the

defendant is charged with the same offence previously tried. Article 19 (16) (b), however, does not similarly protect a defendant tried by a Court martial.

To illustrate, a defendant who is a member of the armed forces charged with murder can be tried by a Court Martial with a jury of peers and subsequently may also be tried by the High Court upon committal by a district magistrate. At the High Court trial, the defendant cannot raise the defence of *autrefois acquit* or *autrefois convict* based on the previous Court Martial trial. On conviction, the High Court judge may take into account any punishment that had already been imposed by the Court Martial.

#### ***k. Lay Person Justice System Proposals***

In 2011, the Government of Ghana formed a committee to review the 1992 Constitution and recommend possible amendments. The Constitutional Review Committee toured the length and breadth of Ghana, providing an opportunity to most individuals and institutions in the country to provide comment and input.<sup>56</sup> One issue that came out prominently was the abolition of the Regional Tribunal. The committee recommended an amendment to Articles 142 & 143 of the Constitution, which authorizes the establishment and composition of regional tribunals, qualifications of chairmen and other panel members, and the jurisdiction of the Regional Tribunals. Even though the constitutional amendment is yet to be made, the Regional Tribunal has, as a practical matter, become a defunct court.

The Courts Act, 1993, (Act 459) which came into effect on 6th July 1993, introduced the lay panel system into the traditional courts. The lower courts were made up of community and Circuit Tribunals. A Circuit Tribunal was composed of a chairman and two panel members with the chairmen being lawyers, while the panel members were laymen. Their decisions were determined by the majority of the panel members. The Community Tribunals, on the other hand, also consisted of three members with one being the chairman. Their decisions were also determined by majority vote. The difference between the Circuit and Community

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<sup>56</sup>Constitutional Review Committee was set up by the President to solicit opinions as to the constitutional provisions which need to be amended. It was set up by an Act of Parliament. The Committee met almost all the professional bodies in Ghana to solicit their opinions. The Committee toured all the Regional Capitals in Ghana.



Tribunals was that in most cases, the chairmen in the community tribunals were lay persons, whereas the chairmen of the circuit tribunals were lawyers. Except in some urban areas, all three members of the Community Tribunals had no legal expertise. The Circuit Tribunal had jurisdiction in all criminal matters arising within the area of its jurisdiction except offences like treason or murder, offences declared by any enactment to be a first-degree felony, and offences punishable by death or life imprisonment. However, the Community Tribunals exercised both civil and criminal jurisdictions.<sup>57</sup>

These two systems were abolished by the Courts Act (Amendment Act) Act 620 because of the dominance of their panel systems by non-lawyers. A single judge system, which is the magistrate and circuit courts, was introduced by the same amendment to replace the abolished community and circuit tribunals. Thus, the amendment to Articles 142 and 143 effectively eliminated lay persons as judges from the criminal justice system.

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<sup>57</sup>See, Courts Act, 1993, Act 30, §§ 43, 44, 46, 47 and §48 of the Courts Act, Act 459 (before the amendment of Act 459).

### III. REVIEW OF JURY TRIALS IN OTHER JURISDICTIONS

The number of jurors who sit on cases and the mode of jury selection and jury instructions vary from one country to another. In this chapter, some of the countries with jury systems, those with only bench trials, and those with a mixture of the two are examined. No attempt is made to assess which one is better because the choice is largely peculiar to the country's culture and history. Nonetheless, the general advantages and disadvantages of jury trials in these jurisdictions will be evaluated to provide helpful insights that may help improve the Ghanaian criminal justice system.

The countries with jury systems, which will be examined are Canada, U.S.A, England, Korea, and Japan (the latter two have a quasi-jury system). Japan suspended their Jury Act in 1943 and the suspension has not been revoked to date. There has not been a jury trial in Japan since 1943. The suspension of jury trial in Japan was influenced by political and cultural factors.

The criminal justice systems of Germany, France, Nigeria and Gambia, which do not have jury trials, will also be examined. In addition, the Togolese jury system will be discussed. It is unique in the sense that defendants are presumed to be guilty of the offense and must prove their innocence.

#### *a. United States of America (U.S.)*

**Jury Selection and Qualification:** About 90 percent of the world's jury trials are held in the United States of America.<sup>58</sup> In the U.S., jury trial is used in both civil and criminal cases. Jury trial may be used in all criminal cases from petty offences punishable by six or more months of imprisonment to capital offences. In some states, municipal ordinance violations are tried by jury.<sup>59</sup> Jury trial gives the ordinary American citizen the opportunity to take part in the

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<sup>58</sup>Paula L. Hannaford-Agor, *Some Differences Between States in Anatomy of a Jury Trial*, 4 JOURNAL USA 7, July 2009 (US Department of State /July, 2009/volume 4/number 7).

<sup>59</sup>Daniel Senger, J.D. Candidate 2011, *The Japanese Quasi-Jury and the American Jury: A comparative Assessment of Juror Questioning and sentencing procedures and cultural elements in lay judicial participation*, University of Illinois College of Law.

administration of justice. The number of jurors who sit on a case varies from one state to the other. The number of jurors who traditionally sit on a case ranges between six and twelve, depending on factors such as the state concerned, the nature of the case or the offence, and whether it is a civil or criminal trial.<sup>60</sup> According to Paula L. Hannaford-Agor, there are 16 states which use smaller juries consisting of six, seven, or eight to try minor offences.<sup>61</sup> In civil matters, the federal courts use smaller juries, but in criminal cases the jury must consist of twelve jurors. There are 17 other states that use smaller juries in civil cases.

**Jury Decisions:** In most states, the jury verdict on guilt in a criminal case must be unanimous except in two states, whose decisions are by majority. In civil cases, there are 16 states whose decisions are determined by the majority of the jurors. In criminal cases, the decision by the jury must be unanimous.<sup>62</sup> In the U.S. individuals 18 years and older may qualify to serve as jurors, but a criminal conviction may disqualify one from serving on a jury, depending on the laws of the particular state.<sup>63</sup> A person's profession or qualification is irrelevant for juror eligibility.

One unique feature about American juries is that jurors are the final arbiters on questions of fact, and an appeal against a jury verdict is ordinarily restricted to questions of law.

**Media Publication:** Media publication is permissible in jury trials in several states. The emphasis is on free speech. An example is the O. J. Simpson trial, which was telecast for people to view the proceedings. Neil Vidmar states that the U.S. jury trial is different from the Canadian one, because the U.S. favours free speech.<sup>64</sup> It is contrary to the positions in Canada and England. But

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<sup>60</sup>*Id.*

<sup>61</sup>*Id.*, Paula L. Hannaford-Agor, *supra*, note 58.

<sup>62</sup>D. Graham Burnett, *A Juror's Role*, JOURNAL USA

<sup>63</sup>*Id.*, Paula L. Hannaford-Agor, *supra*, note 58.

<sup>64</sup> *Justifications: Experimental Examination of Peremptory Use and the Batson Challenge Procedure*, 31 LAW & HUMAN BEHAVIOR 261(2007) in Neil Vidmar & Valerie P. Hans, AMERICAN JURIES (2007, Prometheus Books).

in federal courts a criminal trial cannot be televised, and a civil trial may be televised only if the judge permits it.

State-of-the-States Survey of Jury improvement efforts (April, 2007) conducted by the National Centre for State Courts showed that 154,000 jury cases were heard by courts in the U.S. Of this number, 149,000 were tried in state courts, and only 5,000 in federal courts. Approximately 31 percent of the cases tried by jury were civil cases. Sixty-six percent were tried by jury in criminal cases, and 47 percent of the 66 percent involved a felony. Trial by jury in misdemeanour cases constituted the remaining 19 percent.<sup>65</sup>

**Advantages of Jury Trial:** There are several advantages associated with jury trial, and prominent among them is that trial by jury is a democratic process. Every citizen and legal resident 18 years of age and older, who is not disqualified by law, is entitled to take part in their country's justice system. It allows every person who is eligible to serve as a juror to be part of the administration of justice.

**Disadvantages:** Jury trials can be expensive.<sup>66</sup> The peremptory right to challenge jurors allows litigants to reject jurors who are perceived to disfavour them. A study on race and peremptory challenges conducted by Tufts University, Professor Samuel Sommers and his Harvard Business School collaborator, Michael Norton disclosed the fact that peremptory rights can be influenced by racial considerations. For example, in a series of experimental studies involving a journalist selected to be a juror in a case involving a white defendant charged with robbery and assault, it was found that practising attorneys challenged the juror 79 percent of the time if the journalist was African American compared to 43 percent when the juror was White.<sup>67</sup>

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<sup>65</sup>State-of-the States Survey of Jury Improvement Efforts (April, 2007) conducted by the National Centre for State Courts; Fred Graham, *America Juries* 4 JOURNAL USA 7, July 2009.

<sup>66</sup>Sanders, Joseph and V. Lee Hamilton, *Legal Cultures and Punishment Repertoires in Japan, Russia, and the United States*, (1992).

<sup>67</sup> Samuel R. Sommers and Michael I. Norton, Race-Based Judgment, Race-Neutral

## ***b. England and Wales***

**Jury selection and qualification:** In England, where the right to a jury trial originated and spread later to its colonies, jury trials are used in both civil and criminal cases. Presently, jury trial in civil cases in England and Wales is limited to defamation, malicious prosecution, false imprisonment, and fraud.<sup>68</sup> In criminal cases, jury trial is used in indictable cases and in cases when the prosecutor decides to proceed by jury.<sup>69</sup> All summary cases prosecuted before magistrates are bench trials.

Many of indictable offences, formerly eligible for jury trial, were removed by the Criminal Law Act 1997,<sup>70</sup> and have since become summary offences, thus, now triable only as bench trials. The cases, which were removed from the jury trial to summary trial, were mostly driving offenses and relatively less serious criminal offenses. England and Wales amended their laws. Several offenses were removed from jury trial to summary trial.<sup>71</sup> The rationale behind the amendments was to reduce the cost involved in jury trial.

The Criminal Justice Act, 2003, further reduced the number of jury trials in the Crown Court in two situations. The first situation is when a serious risk of jury tampering exists; and the second is when the case involves complex or lengthy financial and commercial arrangements.

England and Wales have set up a Central Summoning Bureau at Blackfriars Crown Court and it operates on a national basis. It randomly selects names from the electoral register and since 2000 has been computerized. Any person who fails to respond to a summons to serve as a juror can be exempted by the bureau after he or she has provided a good reason.

**Composition of Jury:** In England and Wales, the jurors are usually composed of 12 persons, particularly in trials involving the Crown and High Courts. The minimum number of jurors in the two Courts is nine. Jury trials in the

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<sup>68</sup> The Supreme Court Act, 1981. The Act allows jury trial in the civil cases; libel and slander (defamation), malicious prosecution, false imprisonment and fraud.

<sup>69</sup> The Juries Act of 1974.

<sup>70</sup> The Criminal Law Act, 1997

<sup>71</sup> Jury Service – Gov.UK

County Courts consist of a maximum of eight jurors and a minimum of seven jurors.<sup>72</sup>

The Criminal Justice Act of 1967 amended the rules requiring a unanimous verdict in a jury trial.<sup>73</sup> The present position in the Crown and High Courts is that the jury verdict must be, but if the jurors are unable to achieve unanimity after hours of deliberations, the court must instruct the jurors that a majority of 10 jurors for a verdict is permissible if unanimity is not achievable. In the case of County Courts, a majority of seven jurors is permissible. The change improves the efficiency of jury trials, but its net effect on fairness is not clear.

**Mode of Plea:** In England and Wales, it is the Crown Court which has criminal jurisdiction in indictable offences. In an indictable offence, one cannot predict whether the case will be heard by the jury until the accused person pleads guilty. If the defendant pleads guilty, the case is disposed of by the judge alone.

In England and Wales, jury trial is on the decline. This is because most of the criminal cases have become bench trials except some few serious criminal cases which are heard by jurors after the accused person has pleaded not guilty.

In other jurisdictions, the jurors are empanelled before the plea is taken.

**Peremptory Challenge and Challenges for Cause:** Peremptory challenge and challenge for cause were abolished in 1988. Presently, the prosecutor has the right to object to a juror sitting on a case, even though it is not written in any statute. The practice in England is settled that it is the Crown that retains peremptory right to disqualify a person from sitting as a juror on a case.<sup>74</sup>

**Media Publication:** Jury deliberations are not publicized, particularly in matters that are perceived to be contemptuous of the court. Publications may be sanctioned for contemptuous statements published before, during, and after trial. The right to free speech does not authorize an individual to publish matters that

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<sup>72</sup>Juries Act (*id*).

<sup>73</sup>The Criminal Justice Act, 1967.

<sup>74</sup>The Criminal Justice Act, 1967.

are likely to undermine the administration of justice, including jury deliberations.<sup>75</sup>

### *c. Canada*

**Jury Selection, Qualification and Eligibility:** The institution of jury trial is guaranteed by the 1982 Charter of Rights and Freedom.<sup>76</sup> Persons 18 years and older are eligible to serve as jurors, subject to disqualification by law. Unlike the U.S., judges, magistrates, police, the members of the armed forces, and other categories of people are disqualified from serving as a juror.<sup>77</sup> Jury procedures vary in Canada. For example, a person becomes eligible to serve as a juror at age 19 years in Ontario. A prospective juror must also be a citizen of Canada and must be a resident in the Province. In most provinces, a person who does not speak or understand English or French is not eligible to serve as a juror. According to Vidmar, in Arctic Regions special rules regulate the eligibility of residents to serve as a juror. An individual who does not speak or understand the official English or French languages but who can speak either one of the two Inuit dialects or one of the seven Dene (Indian) dialects is eligible to serve as a juror. The participation of the Aborigines in jury trial increases the acceptance of the Jury System.<sup>78</sup>

Canada selects jurors randomly contacting the offices responsible for voter registration, driver's licenses, and state identity cards (ID). In Canada, offences are categorized into three main groups, namely; indictable, non-indictable (summary offences), and other cases which the prosecutor may decide either to prosecute summarily or on indictment. The defendant also has the right to choose which mode the case should be prosecuted by, if the offence is punishable by five years' imprisonment or more.<sup>79</sup> In the Ontario jury system, the defence may make

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<sup>75</sup>Neil Vidmar, *supra*, note 25.

<sup>76</sup>*Id.*, Neil Vidmar.

<sup>77</sup>*See*

[http://www.attorneygeneral.jus.gov.on.ca/english/courts/jury/general\\_jury\\_duty\\_info.asp](http://www.attorneygeneral.jus.gov.on.ca/english/courts/jury/general_jury_duty_info.asp).

<sup>78</sup> Neil Vidmar and Regina Schuller, *The Canadian Criminal Jury*, 86 CHI-KENT L. REV. 487-585 [2011].

<sup>79</sup>1982 Charter of Rights and Freedom.

a special application with the consent of the Attorney General for the suit to be tried by the bench.<sup>80</sup>

**Composition of Jury:** Jurors are used in both civil and criminal cases. In criminal trials, the number of jurors who sit on a case actually ranges in size, but in most cases it contains 12 people. In misdemeanour offences, the jury can be as small as six. Some provinces use alternate jurors who take the place of an original juror who cannot complete their juror duty because of sickness or death.<sup>81</sup> In Canada, the Employment Standards Act mandates employers to give employees time off to attend jury selection and juror service and they remain employees until the jury service is over. However, employees from private establishments are considered to be on unpaid leave for the period of jury duty.

In most provinces of Canada such as Ontario, jurors are selected for all the cases listed for that criminal session. At the discretion of some of the judges, one or two alternate jurors are selected for each case. The remaining members are discharged for that period. Most provinces in Canada have alternate jurors. They are selected as additional jurors and sit in on the proceedings and whenever a juror cannot continue to sit due to illness and other important reasons, one of the alternate jurors is substituted.

In most other countries, the trial judge challenges prospective jurors for cause, but the position in Canada is entirely different. In Canada, jurors are presumed to be impartial and are selected without a voir dire. Nonetheless, in cases involving exceptional pre-trial publicity or if the defendant is a member of a racial or ethnic minority group, the prospective jurors may be vetted by a process known as “challenge for cause.” Under this process, members of the jury pool decide themselves on the impartiality of prospective jurors. If either the defendant or the prosecution objects to a particular prospective juror, two members of the jury pool determine the juror’s impartiality.<sup>82</sup>

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<sup>80</sup> Terry Skoline, THE JURY SYSTEMS IN CANADA, *supra*, note 18.

<sup>81</sup>Diraj S. Gosal, CANADA’S CRIMINAL LAW AND THE JURY SYSTEM.

<sup>82</sup>*Id.*, Neil Vidmar.



In civil cases, the number of jurors ranges from six to eight, but very few cases are tried by jury. Civil-jury-tried cases arise only in Ontario and British Columbia, and they are used sparingly.

**Peremptory Challenges:** Peremptory challenges are limited. On the other hand, challenges for cause are unlimited, but the jurors, not the judge, rule on the challenges. Neil Vidmar in his article, *Review of Jury Systems Abroad Can Provide Helpful Insights Into American Practices*, *supra*, at page 2, described the role of the juror in determining challenge for cause by stating that "*In Canada, two triers have the sole responsibility for determining whether a juror is 'impartial between the Queen and the accused.'*"<sup>83</sup>

**Media Publication:** Video cameras and other photographic devices are not allowed to be used in the court rooms during a jury trial. Moreover, if any publication of a jury trial is likely to amount to contempt, the publisher of that story may be held liable for contempt. The defendant's and the witnesses' privacy trump free-speech considerations. Jury deliberations are not covered by the media, and any breach of the rule constitutes contempt of court.<sup>84</sup> Also, jurors are forbidden to disclose anything about their deliberations under contempt of court. However, after all appeals are finished, the media may report the case in detail. An example involves the "Picton Pig Farmer" murder trial when media reported fully on the horrifying case but only after the appeals were completed.<sup>85</sup>

**Jury Instructions:** Detailed jury instructions are prepared for the jurors to apply the law in the case. There are books on jury instructions prepared by text writers to supplement the bench instructions to the jurors.

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<sup>83</sup> *Id.*, Neil Vidmar.

<sup>84</sup> See, *Canadian Judge Threatens U.S. Journalists with Contempt*, Reporters Committee for Freedom of the Press, <http://www.rcfp.org/browse-media-law-resources/news/canadian-judge-threatens-us-journalists-contempt>

<sup>85</sup> [http://www.vancouver.sun.com/news/pickton/index.html?utm\\_source=feedburner&utm\\_medium=feed&utm\\_campaign=Feed%3A+canwest%2F229+\(Vancouver+Sun+-+News\)](http://www.vancouver.sun.com/news/pickton/index.html?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+canwest%2F229+(Vancouver+Sun+-+News)). See also, Vidmar N., *Pretrial Prejudice in Canada: A Comparative Perspective on Criminal Jury* 79 *Judicature* 249 (1996).

**Judge Summing Up:** The judge sums up the law and the facts to the jury after the defence has closed its case and their lawyers have addressed the court. Any opinion offered by the judge does not bind the jurors, but in cases when the judge's summing up is in error, the aggrieved party may appeal it. The common grounds of error in summing up are non-direction of law or fact or both and misdirection.

***d. Australia***

In Australia, the prescribed number of jurors typically chosen to try a case is twelve. In some of the States such as Victoria, 15 jurors can be sworn in to sit on a case with three of them considered as reserve jurors. The reserve jurors take part in the proceedings and they are made to fill the places of jurors who are discharged by the court on some ground such as ill health. Jurors can be discharged on other grounds but the minimum number of jurors to deliver a judgment is ten. Reserve jurors are used in four jurisdictions and the number permitted by law is between two and six.

***e. Germany and Europe***

The jury system has<sup>86</sup> been phased out from most of the European countries, including Germany. The countries that have retained jury systems in continental Europe are Austria and Norway. Jury trial is also available in rare cases in Belgium and Spain. In Norway, the criminal court exercising jurisdiction in indictable offenses is composed of three professional judges and eight jurors, who are controlled by the professional judges. In Norway, ten-member juries sit with judges and they are also controlled by the judges. The jury system has survived in few jurisdictions in Belgium and Spain.

In Germany, the jury system was phased out in 1924 and in the Weimar Republic of Germany, it was abolished by a statute.<sup>87</sup> The jury system has been completely phased out and both the trial and the appellate courts use either a mixture of lay and professional judges or professional judges, depending on the composition of the court.

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<sup>87</sup>Gerhard Casper and Hans Zeisel, *Lay judges in the German Criminal Courts*, 1 J. LEGAL STUD. 135 [ 1972].

The Amtsrichter court is presided over by a single judge, and it exercises jurisdiction in criminal cases involving a misdemeanour offence punishable by six or more months imprisonment. Kleine Strafkammer court, which handles appeals from the Amtsrichter court, is presided over by one professional judge and two lay judges. The Schoffengericht court exercises jurisdiction over misdemeanour offences that are outside the jurisdiction of the Amtsrichter court. The most serious criminal offences that are not political, such as treason, are tried by three professional and six lay judges and they have equal votes. Serious political cases, such as treason, are heard by five professional judges in the Oberlandesgericht court and appeal on a question of law is heard by three professional judges.<sup>88</sup>

Cases are heard expeditiously and are less expensive with no jury-associated expenses. The lay judges acquire knowledge in law as they always sit together with a professional judge or judges, and in most of the cases, they seem to understand the legal issues involved.

#### *f. Nigeria*

The British introduced the jury system in Nigeria, but it was abolished after Nigeria's first coup d'état in the 1960's. In Nigeria, since the military government abolished jury trial, all criminal trials have been bench trials, except in some parts of northern Nigeria where Sharia law is practiced. The judges are both triers of fact and law. The bench trial expedites adjudication of cases. Processes such as jury selection, peremptory cause, and challenge for cause, jury instructions, and summing up, which are associated with jury trials and may cause unreasonable delay, are not encountered in bench trials. Bench trials are also less expensive.<sup>89</sup> In Nigeria appellate judges correct all errors in judgments from the trial courts, and there is no satellite litigation about the selection or performance of juries.

The notion that a jury trial is a strong indicator of a democratic regime is not recognized in Nigeria as Nigerians perceive judges as representatives of the people, to whom the populace have entrusted the power to adjudicate and not members of the government.

#### *g. Sierra Leone*

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<sup>88</sup> *Id.*, Gerhard Casper and Hans Zeisel.

<sup>89</sup> *Id.*, Daniel Ehiaghalua.

Sierra Leone was one of the first African countries to accept jury trial into its legal system. However, presently, only capital offences are tried by jury.<sup>90</sup> Section 92 of the Criminal Procedure Act 1965 requires all magistrate courts to summarily hear all criminal cases before them.<sup>91</sup> All other offences are bench trials.

Sierra Leone abolished jury trial in felony cases, because it was expensive and laborious. Cases, which took several years if it involved a jury, are presently heard within a reasonable period of time. Jury trial was criticized as expensive because of the cost associated with juror selection, interviewing, and sitting. In many cases, it appears as if jurors did not fully understand the legal issues and at times they refused to follow the jury instructions provided them. Like Ghana, another shortcoming is that competent qualified individuals often seek to excuse themselves from serving on a jury. The result is that in many cases the remaining juror pool consists of semi-illiterate individuals who have serious difficulty understanding jury instructions, which are delivered in the English language.

A defendant may elect to be tried by a judge with the aid of assessors in offences, which are not punishable by death. The Attorney General may also apply to the court for an order that a defendant be tried by a judge with the aid of assessors, if the offence is not punishable by death.

The Assessors are selected from people who have been summoned to act as special jurors. The number of assessors cannot be less than three, and their role is an advisory one.

After the close of evidence, the judge sums up the evidence and asks the assessors to state their opinions orally. The judge is required to record the assessors' opinions, but the opinions do not bind the judges. The judge has the exclusive power to enter judgment.

**Qualification of Jurors:** A prospective juror must be a resident in Sierra Leone and must be literate in English. Every literate person between the ages of thirty and sixty years and who is a resident of Sierra Leone qualifies as a juror.

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<sup>90</sup>See, Criminal Procedure Acts, §131.

<sup>91</sup> Criminal Procedure Acts, 1965.

But Section 151(2) of the Criminal Procedure Act 1965, exempts many persons from jury service, including magistrates and judges, teachers in private and public schools, policemen and women, members of the armed forces, ministers of states and members of House of Representatives, staff of the Attorney-General, priests and ministers of religions, court officers, legal practitioners, medical practitioners, dental surgeons, registered druggists, and nurses in actual practices.<sup>92</sup> A person who has been convicted of treason or a felony or any offence involving dishonesty and who has not received a presidential pardon is not qualified to serve as a juror.

Magistrates of each judicial district must prepare a juror's list for their areas for every year commencing on the 1<sup>st</sup> of January. It is the duty of the District Officer of the Immigration Office to submit the names of all residents in the district who are literate in English and are able to serve as jurors. The list must be submitted to the Magistrate during the 1<sup>st</sup> week of August every year. The Magistrate determines the list of persons he deems suitable to serve as jurors in the district and sends a copy to the district's sheriff or deputy sheriffs, which constitutes the official list of jurors of that district for the year commencing 1<sup>st</sup> January.

**Composition of Juries:** Juries are composed of twelve persons. At a court sitting, the names of the jurors confirmed by the magistrate are written and placed into boxes, and when it comes to the selection of jurors, the court registrar in open court draws from the box the number of jurors to sit on a case until the required number is attained.

**Peremptory Right and Challenge for Cause:** Every defendant has three peremptory challenges. There is no limit on challenges for cause, but the statute has set down only four grounds upon which challenge for cause can be made. The first is on grounds of partiality or prejudice; the second concerns infirmity of the person such as old age, deafness, blindness, infirmity or ill health; the third challenge for cause may be invoked when the law disqualifies the person from sitting as a juror; and the fourth challenge comes into play if a potential juror is illiterate in the English language.<sup>93</sup> The prosecution does not have a peremptory challenge of right. Both the prosecution and the accused may exercise the right of

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<sup>92</sup> Criminal Procedure Acts 1965, §151(2).

<sup>93</sup> *Id.*, §§177; 178.

challenge for cause. If a challenge for cause is raised, the person who is challenged is examined under oath and the judge solely makes the ruling.<sup>94</sup>

**Decision of the Jury:** In a case of murder or treason, the jury's verdict must be unanimous. During its deliberations, no one outside the jury is permitted to have discussions with any member of the jury. If the verdict is not unanimous, the judge can require the jury to continue deliberations. If it takes an unreasonable time for the jury to deliver its verdict, the judge may state that the decision is not unanimous. In all other cases, the jury foreman announces the jury's verdict. If the jury is not unanimous in its verdict, the judge may discharge the jury and the defendant may be detained in custody or admitted to bail until another trial is scheduled. The members of the jury pool who sat on the initial case are disqualified from sitting on the defendant's second trial.

#### *h. Togo*

All capital offences and serious political crimes are tried on indictment. All other offences are tried summarily. Togo's criminal law contains novel procedures. In all criminal cases, the accused person is presumed guilty and must prove their innocence. Togolese citizens who are resident in Togo, and who are literate in French, qualify to serve as jurors. The jurors are selected from their districts, and individuals like judges, magistrates, court officials, members of the armed forces, and the police are exempt from juror service.

In a capital offence case, the jury verdict must be unanimous, and in all other cases, the verdict is by majority vote.

#### *i. Liberia*

In 2013, Liberia amended the Liberia Code of Laws to change the composition of its jury from 12 to 6 jurors, and also increased the jurisdiction of magistrates to exercise jurisdiction over all offences except capital offences. One

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<sup>94</sup>*Id.*, §179.

of the aims is to reduce the cost of jury trial. It has also set up a jury-management board to manage jury trials in the courts.<sup>95</sup>

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<sup>95</sup> [Allafrica.com/stories 2013 10150708](http://Allafrica.com/stories/2013/10150708)

## *j. Conclusion*

In all jurisdictions other than Togo, a defendant is presumed to be innocent until guilt is proven beyond a reasonable doubt.

Several jurisdictions use a jury in both criminal and civil cases, but most of the countries use jury trials in criminal cases only.

Several countries use jury trial; others use bench trials, jury with the aid of assessors, and a mixture of professional and lay judges. The particular type of criminal justice system of a country is largely determined by the respective nation's culture.

There is no uniformity in jury trial throughout the world. Some of the examples used in a book titled World Jury Systems, edited by Neil V. Jwar (Oxford University Press 2000 and reprinted in 2003) discussed the following:

There is no equivalent of 'voir dire' procedure in the Scottish Criminal Jury System and it may surprise a person who is well versed in the U.S. jury system, where 'voir dire' has been institutionalized.

The comparison of these criminal justice cultures is useful and their impact on Ghana's jury-trial system is discussed in Chapter 5.



#### **IV. THE POTENTIAL IMPACT OF OTHER COUNTRIES' CRIMINAL JUSTICE SYSTEMS ON GHANA'S JURY TRIAL SYSTEM**

This chapter reviews the criminal justice system of the other countries discussed in chapter three and the extent to which those systems can provide insights in the evaluation of the criminal justice in Ghana, particularly the jury-trial system.

As discussed in Chapter Two, some Ghanaians are demanding the abolition of the jury system because they believe that verdicts are delivered by jurors who are not competent. Apart from the juvenile courts and family tribunals, which have lay members on the panels who perform discrete adjudicatory responsibilities, many Ghanaians strongly oppose lay persons' participation in the justice delivery system in its present form.<sup>96</sup> The advocates of jury trial abolition criticize the competence of jurors. The two judges named, Efo Kossi Kaglo and Henry Kwofie, asserted that jurors do not fully understand judicial proceedings and their judgments do not reflect the evidence on record. Several commentators expressed concern about the jurors' objectivity and independence from corruption.

The question is why are jury systems successful in places such as Canada, the U.S., and England, but not in Ghana? I will consider the jury-trial system in the U.S., Canada, and England and identify features which might be adopted in the Ghana jury trial system.

##### ***a. Jury Selection in Canada, U.S., and England and Wales***

In Canada, in provinces like Ontario and Quebec, the current voters' list is used to randomly select jurors. It is revised every four years. The voters' list contains all the particulars of the Canadian citizens who are 18 years and older. Persons who are of Canadian citizenship, 18 years of age and older are eligible to be selected as jurors. In Ontario, a juror must be 19 years of age or older. People older than 65 years of age may choose to serve as jurors.

An individual summoned from the jury pool must complete a jury certification form and submit it to the sheriff's office within 10 days of receipt.

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<sup>96</sup>See, The Children's Act 1998, Act 560 and the Juvenile Justice Act, 2000, Act 653.

The information in the certification form is used to prepare the jurors' list. Prospective jurors are randomly selected from the voters' list and questionnaires are sent them, asking whether the prospective juror should be considered on the jury list or not.<sup>97</sup> The sheriff conducts background checks of those who have indicated a willingness to serve as jurors. A jury list is then prepared and any listed juror may be summoned to sit on a case at any time, depending on the court's needs and the municipality.

In some states in the U.S. juror lists are also compiled from current voters' registry, driver's license, and state ID renewal lists. The potential jurors are sent questionnaires with questions on competency in English language, disabilities, and any impediment that may prevent the person from serving as a juror. The responses are examined and those qualified are served with summonses. In the federal system, jurors are selected consistent with the Jury Selection Act.<sup>98</sup> Statistics from jurors source list by Curriden (1966) cited in Boatright, *Improving Citizen Response*, Note 50, at 15, state that in 1996, research conducted in 46 states in the U.S. revealed that 25 states used both voters' lists and drivers' licenses lists to prepare jurors' list. Fifteen states used voters' lists only, and six states only used driver's license lists.

In England and Wales, jurors are selected randomly from the current voter identity register. Jurors must be between 18 years and 70 years of age, and eligible jurors are identified and placed on a jury list.<sup>99</sup>

As a practical matter, jury selection in Ghana is not done according to the law and, as a result, too many competent individuals are inappropriately excused from serving as jurors. The District Magistrates who are responsible for preparing jury lists too often have delegated this important responsibility to local registrars. The practice is contrary to law. The problem is that registrars write to public institutions asking them to submit names of their employees to serve as jurors. In most cases, the institutions fail to submit the names of their best employees, claiming that they are under-staffed and that the employee is essential.

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<sup>97</sup>[http://en.wikipedia.org/wiki/jury\\_selection](http://en.wikipedia.org/wiki/jury_selection).

<sup>98</sup> See [http://en.wikipedia.org/wiki/juries\\_in the United States](http://en.wikipedia.org/wiki/juries_in_the_United_States) and [http://en.wikipedia.org/wiki/jury\\_selection Service Act](http://en.wikipedia.org/wiki/jury_selection_Service_Act).

<sup>99</sup> See <http://www.attorneygeneral.jus.gov.on.ca/english/courts/jury/geninfo.asp>

Alternatively, some institutions submit names of lower level employees such as typists, security men, and drivers who are semi-illiterates and have a poor command and understanding of the English language in lieu of submitting names of more qualified, competent employees.

The bulk of the educated and young workforce personnel is in the private sector, and the registrars typically do not invite them to serve as jurors. Usually the registrars only request public institutions for potential jurors.

Adopting the use of voter registration lists, as employed by Canada, the U.S., and England and Wales, would improve the jury trial system in Ghana. It would capture the employees in both private and public sectors. If random selection is made from the voters' register, which contains detailed information about persons aged 18 years and older, the chances increase of getting competent people to serve as jurors.

With an expanded pool of jurors consisting of more educated individuals, the common criticism of incompetent and illiterate jurors would be effectively addressed. If the selection is properly done, individuals who are well-versed in the English language could be selected and would be able to perform their task as jurors more efficiently.

#### ***b. Age***

There is the need to have a second look at the age of people who qualify to serve as jurors. In Ghana, people between 25 years and 60 years qualify as jurors. The general retirement age in Ghana is 60 years. Most retirees remain active at age 70 years. Unfortunately, many retirees have little to do. Perhaps it may make sense to raise the juror maximum age to 70 years. With their rich experiences from their previous employment and their availability, many of them would seem to be ideal jurors. In England and Wales, people are eligible to serve as jurors until they attain 70 years.

In Ghana, people of 18 years and above qualify to become Members of Parliament, yet the minimum age of a juror is 25 years. There is no evident reason why the minimum juror age in Ghana should not be reduced to 18 years.

In Canada, individuals 18 years or older qualify as jurors. Before 1988, the maximum age for jurors was 65 years. The Criminal Justice Act, 1988, raised the maximum age of jurors from 65 years of age to 70 years of age. Individuals between 65 years of age and 70 years of age can be excused automatically. This rule was, however, changed in 2004. The position in England and Wales since 2004 is that an individual between 65 years of age and 70 years of age may be excused from juror services on good cause.

There is a reform underway to amend the maximum age for jurors from 70 years to 75 years. In England and Wales,<sup>100</sup> this proposal has been hailed by most pensioners. Professor Chery Thomas, a Jury Project Director of University College of London, believes that the announcement to increase the upper limit for jurors is overdue. She said thus: “*virtually every other common law jurisdiction that has a jury system currently has no upper age limit at all for jury service*”<sup>101</sup>

Aspects of the jury systems in Canada, U.S., and England and Wales are worth emulating. I recommend an amendment to Act 30 to allow persons 18 years of age to 70 years of age to be eligible to serve as jurors, provided they meet the other requirements under Act 30. The recommended amendment would bring more people into the age bracket and it will help to expand the number of eligible jurors. The maximum years of age in Ghana is on the low side and should be amended. There is no justification to deny people who are between 18 years of age but below 25 years of age and are eligible to vote the right to serve their country as jurors. The rationale behind jury trial is that people should be tried by their peers. Any person 18 years of age or older who commits an indictable offence may be tried by jury. In order to uphold the principle behind jury trials, a competent individual 18 years or older should be able to serve as a juror. If a person 60 years of age and older commits an indictable offence, the defendant is tried on indictment by jurors.

In accordance with the principle of fairness and non-discrimination, an individual 60 years of age or older should similarly be qualified to serve as juror in such a case. Currently, persons older than 60 years who commit indictable

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<sup>100</sup> England & Jury Service/ Need a Solicitor.com

<sup>101</sup> Jury Service – for U.K. (supra)

offences are tried by jurors who are younger than them and cannot reasonably be said to be their peers. This is discriminatory and arguably illegal.

### ***c. Jury Instructions***

Canada, the U.S., and England and Wales use jury instructions to enable the jurors to appreciate the law they are expected to apply in an individual case. In Ghana, there are no jury instructions apart from the provisions in section 279 of Act 30.<sup>102</sup> The jurors are left in the dark, often they do not understand their work, and their decisions are usually colored by the media and other extraneous influences. Jury instructions should be prepared for the jurors to guide them in making decisions based on the evidence on record to avoid unfair verdicts. The cases of *Republic v Yaw Nimo Kwakorakwa*, *Godfred Sammy Amissah and Gabriel Kwaw Bosso*, discussed in Chapter 1, succeeded on appeal because the jurors' decisions were not based on the evidence on record. Such cases provide evidence that the jurors need instructions to enable them to fully understand the proceedings.

It is important that the general population support a jury trial system, but this can only be accomplished through a broad education effort. Justice Kossi Efo Kaglo and Mrs. Afia Serwaa Asare Botchwey, who advocate the abolition of jury trial, concluded that the jury trial has outlived its usefulness. But the advocates of the jury trial understand the true value of the jury trial system. The jury trial value was discussed by the United States Supreme Court in the case of *Duncan v. Louisiana*, 391 U.S. 145 (1968): “*Those who wrote our Constitution knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the Constitution strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right trial by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the complaint, biased and eccentric.*”

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<sup>102</sup>Act 30, § 279, provides the duty of the jurors. They are not basically juries' instruction but it tells them how they should render their verdicts.

Jury trial has many more advantages than disadvantages, as it protects the accused persons against judicial bias and abuse. Article 125 (2) of the 1992 Constitution permits lay citizenry participation in the administration of justice through the jury and assessor systems and public and customary tribunals. The framers of the Constitution of Ghana saw the importance of jury trial, and the public's failure to appreciate its value means that we have failed at educating them on this important civic responsibility. The High Court Judge's and the Principal State Attorney's criticisms can be addressed by selecting people who are literate in the English language and who appreciate jury trial after given adequate jury instructions.

#### *d. Number of Jurors*

Ghana requires seven jurors and their decisions in capital offences must be unanimous. In all other cases, the jurors' decision must be a majority decision of at least five to two. In capital offences, a dissent by a juror results in a hung jury. If there are more than two dissenting jurors in non-capital offences, it also results in a hung jury. The composition of juries in indictable offences in Canada, the U.S., and England and Wales is 12 members. In England, where the majority decision for conviction is less than 10 jurors, the conviction is a hung jury.

I am of the opinion that there is a need to increase the composition of the jury from seven to twelve members. If the composition of the jury is 12, a conviction by 10 would be valid. A 12-member jury has a proportionate advantage over the seven-member jury because one or two dissenting views will not affect a conviction. A jury trial seems to be more democratic in countries if the composition of the jury panel is 12 members. It suggests that the ordinary citizenry is given the opportunity to take part in the administration of justice in their country. To convict a defendant in a criminal case in the U.S., the verdict must be unanimous, but I recommend that Ghana adopt the English System, where a majority of 10 jurors suffices.

In Nigeria, the abolition of the jury system by the military takeover satisfied a large part population who opposed the jury system on religious and other grounds. The abolition of the jury system in Gambia, too, was politically motivated by the military junta, which does not apply to Ghana.

The combination of judges and non-lawyers in the judicial administration in countries such as Germany, Russia, and Poland, which was introduced in Ghana through the tribunal system, has been phasing out gradually because the concept was not wholly embraced by the people. The only surviving one, the Regional Tribunal, is to be phased out through constitutional amendment. The Constitutional Review Implementation Committee, which is implementing the recommendations of the Constitutional Review Committee, has proposed the abolition of the Regional Tribunal system. The lay-person-driven courts in Ghana have failed to meet the people's aspirations, and the judicial systems in countries such as Germany and Russia no longer have any impact on Ghana's criminal justice system.

The jury system can be improved by replicating some of the features of jury systems in other countries, including the mode of selection of jurors, composition of juries, the age-eligibility of jurors and the provision of jury instructions from Canada, the U.S., and England in Ghana. Some of these features would need to be adjusted to better fit the Ghanaian justice system.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

### ***a. Conclusions***

The concluding part of this thesis focuses on the impact of jury trials in other jurisdictions on Ghana's jury trial. The other countries whose jury systems may positively impact on Ghana's jury system are England and Wales, Canada, the U.S. and Liberia.

Section 2 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) regulates criminal trials in Ghana. It provides for offences which are to be tried summarily and on indictment. It provides as follows:

(1) An offence shall be tried summarily if-

(a) the enactment creating the offence provides that it is punishable on summary conviction, and does not provide for any other mode of trial; or

(b) the enactment creating the offence does not make a provision for the mode of trial and the maximum penalty for the offence on first conviction is a term of imprisonment not exceeding six months, whether with or without a fine.

(2) An offence shall be tried on indictment if-

(a) it is punishable by death or it is an offence declared by an enactment to be a first degree felony; or

(b) the enactment creating the offence provides that the mode of trial is an indictment.

(3) Any other offence is triable on indictment or summarily.<sup>103</sup>

The Constitution of the Republic of Ghana, which is the Supreme Law in Ghana, provides that apart from the offences of treason and high treason, any other offence which is punishable by death or imprisonment for life must be tried by a judge and jury. If the offence is punishable by death, the verdict of the jury must

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<sup>103</sup> Criminal and Other Offences(Procedure) Act, *supra*



be unanimous, and in the case of life imprisonment, it must be by at least a majority of five jurors.

Article 19 of the Constitution, which covers jury trial, is an entrenched provision of Article 290 of the Constitution. This means that the provision on jury trial cannot be amended without a referendum held throughout Ghana. At least 40 percent of the persons entitled to vote, must vote on the referendum and at least 75 percent of the persons who voted must cast their votes in favor of the bill.

The Constitution of Ghana permits citizens to exercise popular participation in the administration of justice through the tribunals, jury, and assessor systems. Article 125 (2) of the Constitution of Ghana, 1992 provides that, *“Citizens may exercise popular participation in the administration of justice through the institutions of Public and Customary tribunals and the jury and assessor systems.”*<sup>104</sup>

The above provision is one of the entrenched provisions under Article 290 of the Constitution of the Republic of Ghana.

The combined effect of Articles 19, 125, and 290 of the Constitution is that trial by a jury is a good thing, because it allows the citizens to participate in the administration of justice. The provisions on jury systems in Ghana are entrenched and would therefore not be easy to abolish.

Discussions in chapters one through four showed that the jury system, when managed well, is a good system. Ghana should emulate the procedures in jurisdictions such as England and Wales; and the U.S. and Canada, which effectively and efficiently try criminal offences by the jury system.

The questions posed include what positive impact may the jury systems in England and Wales, the U.S. and Canada have on the Ghana jury system? The important areas to consider are:

- (a) What offences should be tried by jury?
- (b) Who is eligible to serve as a juror?

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<sup>104</sup> Constitution of Ghana, 199 (supra)

(c) What is the mode of selection of the jury?

(d) What instructions are to be given to the jurors (jury instructions)?

*i. Offences to be Tried by Jury*

In Ghana, with the exception of treason and high treason, all offences that carry death sentences; life imprisonment; and first-degree felonies are tried on indictment.

Some of the first-degree felonies such as rape, the use of offensive weapons, and piracy (except a person who commits piracy with intent to murder a person who is on board or belongs to the ship) could be tried summarily to expedite the delivery of justice. This calls for an amendment of the Criminal Offences Act, 1960 (Act 29), by amending the punishments which carry maximum of life sentences to a number of definite years. If the maximum sentences are amended from life imprisonment to a number of definite years, it could be tried summarily as is done in the case of robbery. This would help reduce the number of indictable offences in the country. There is no evidence in Ghana of an instance where a Court imposed life sentence on a person who was convicted of a first-degree felony.

If the Criminal Offences Act is amended, the indictable offences should be limited only to capital offences. In the Northern Region, about 50 percent of the indictable offences were first-degree felonies. On average, about 30 percent of the indictable cases listed before the courts in the Greater Accra, Northern, and Central Regions are first-degree felonies.

The following statistics of first-degree felonies were listed in the High Court of Ghana in selected regions from 2011 to 2013:<sup>105</sup>

REGION OF GHANA	PERCENTAGE OF FIRST-DEGREE FELONIES OUT OF TOTAL INDICTABLE OFFENCES			
	2011	2012	2013	AVERAGE

<sup>105</sup> Registry of the Judicial Service of Ghana

Northern	50%	33.3%	66.7%	50%
Central	0%	0%	15.4%	5.1%
Greater Accra	44%	44%	20%	36%

From the above statistics, it is evident that if the first-degree felony offences become eligible for bench trial, the number of indictable offences would be reduced.

The Criminal Justice Act, 2003, has further reduced the number of jury trials in the Crown Court in two situations. The first situation is when a serious risk of jury tampering exists and the second is when the case involves complex or lengthy financial and commercial arrangements.

The total number of cases which are tried on indictment could be reduced by adopting the approaches used by England and Wales and Ontario, Canada. Indictable offences could be reduced to offences punishable by death only.

## ***ii. Selection***

The mode of jury selection in Ghana allows able citizens to evade jury service. Most states in the U.S., Canada, England and Wales use electoral registers and drivers' licenses to supplement the lists with other lists of names which are likely to cover all the people between 18 years of age and 70 years of age.

Employers should not be given the opportunity to prevent some of their employees from serving as jurors. It should be seen as a national duty and anyone who fails to respond to jury summons should be punished according to law.

In Ghana, persons must understand the English language before they can serve as a jurors. There are 56 indigenous dialects in the country. The following

nine languages: Akan, Dangbe, Ewe, Kasem, Gonja, Dagare, Ga, Dagbani and Nzema, however, are the main languages.<sup>106</sup>

Most of the witnesses testify in their local languages and the court interpreters translate them into English. Unilingual aborigines should be given the opportunity to serve as jurors in their areas. According to Vidmar, in arctic regions in Canada, the aborigines who can speak neither English nor French, but can speak one of the Inuit dialects or one of the seven Indian dialects are eligible to serve as jurors. In the Akan-speaking areas, the people who are not literate in English are eligible to serve as jurors. This could be extended to almost all the regions. Some of the members of the Judicial Committees of the Traditional Councils who are not literate in English are eligible to sit as judges in those courts and that eligibility can be replicated in the jury system. This step would provide cultural perspective to the jury system and further increase community acceptance of the law.

In Ghana, if a juror becomes seriously ill or passes on, the panel has to be reconstituted for the suit to commence *de novo*.

In 2010, a High Court judge who was a judge with the seven-member panel of jury hearing of a case in which a politician by name Mobila was killed, had to start the case *de novo*. This was because in the course of the trial, one of the jurors fell sick, and due to the inordinate delay caused by his sickness, the panel had to be reconstituted. If there were alternate jurors, one could have easily stepped into the shoes of the sick juror. The Canadian alternate juror system would have a positive impact on the Ghana jury system.

The system in England and Wales is different. They do not have alternate jurors but they have a certain number of jurors at the start of the trial and the minimum number of jurors at the time of judgment. For example, in both the Crown and the High Courts, section 17 of the Juries Act of 1974 provides that jurors at the start of trial in both the Crown and the High Courts shall be twelve, but it could be reduced to a minimum of nine due to unforeseen circumstances.

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<sup>106</sup> Ghana Airports Company Ltd 2013 Diary; [www.ghairport.com.gh](http://www.ghairport.com.gh)

In respect of the Coroners Court, Section 8 of the Coroners Act, 1988, provides that the Court shall start a trial with between seven and eleven jurors. The minimum number of jurors at the time of judgment is seven. This cannot be replicated in Ghana because of the jury size. It is proposed that the alternate jury system should be adopted to avoid delays due to indisposition or even death of a juror.

This thesis was based on information gathered from interacting with seven out of the ten High Court Registrars in Ghana about their opinion on the peremptory challenge, and all of them were of the opinion that it has outlived its usefulness and should be abolished. All of them advocated the use of challenge for cause only as the peremptory challenge is subject to abuse. England and Wales also abolished the peremptory challenge in 1988, which they found to be subject to abuse. Section 118 of the Criminal Justice Act, 1988, abolished peremptory challenge and improved challenge for cause.

This thesis recommends that Ghana also abolish its peremptory challenge and strengthen the challenge for cause which is heard by the judge who makes the ruling.

### ***iii. Jury Instructions***

In Ghana, there are no prepared instructions for jurors as used in the U.S., Canada and England and Wales. The jurors do not understand their role until it comes to deliberations to render their judgment. Instructions should be given at the beginning of the trial, during the trial and at the summing up stage to ensure that the jurors understand their roles as triers of fact.

In Ghana the unemployed, self-employed, and people working in private firms, partnerships and companies are not invited for jury service. In England and Wales, job demands such as unemployment and self-employed cannot be used as an excuse from sitting as a juror.

The thesis recommends that jury duty becomes mandatory for any Ghanaian aged between 18 years of age and 70 years of age who has not been exempted by law from serving as a juror. This would address the issue of shortage of jurors in the country.

In Ghana, all the jurors attend court whenever there is a court sitting. It is immaterial whether or not the juror is sitting on any of the cases listed for the day. It would save the state money if jurors are empanelled for all the cases before the court and those not empanelled on any case are discharged. Furthermore, jurors who do not have sittings need not attend court and could return to their jobs.

### ***b. Recommendations***

The institution of jury trial is determined by the cultural and political factors of the country concerned. The sustenance of jury trials is largely determined by political and cultural factors. In Africa, some of the Commonwealth countries such as Gambia and Nigeria which used to have jury trials abolished it after successful military take-overs.

The decline of jury trial in England and Wales, Scotland, and Liberia can be attributed to political and economic factors. Jury trial is perceived to be very expensive and has influenced the decisions of some governments to offload most of the criminal offences from jury trial to bench trial.

A jury trial allows citizens to participate in the administration of justice. The jury system in Ghana is not properly organized and that is why some people, including judges, are calling for its abolition. This thesis has proposed several amendments to the governing legislation and jury procedures. These recommendations are outlined below.

#### ***i. Expanding the Age Bracket for Jury Service***

An amendment to Act 30 to allow persons 18 years of age to 70 years of age to be eligible to serve as jurors provided they meet the other requirements under Act 30. Regarding the inclusion of persons between 60 and 70 as jurors, this would be beneficial because the current situation in Ghana allows for persons aged between 25 and 60 to serve as jurors. Meanwhile, the retirement age in public and civil service is 60 years and this creates a situation whereby persons who are retired are unable to utilize their wealth of experience to positively impact the criminal justice system.

Moreover, many persons who are between 18 years to 25 years are already actively participating in the work force in areas such as teaching, nursing, and midwifery among others and are capable of participating in the jury system. It would be a waste of human resources not to include these persons in the process.

***ii. An Amendment to Increase Jury Number from Seven to Twelve***

It is recommended that there should be a statutory amendment to increase the number of persons to serve as jurors on a case from 7 to 12. This is to avoid the situation whereby whenever a juror is indisposed, he has to be replaced and the whole case has to be started *de novo*. Such a situation hinders the speedy and effective determination of cases.

***iii. A Statutory Amendment to Take Certain First-Degree Offenses Out of the Domain of Jury Trials***

It is further recommended that there should be a statutory amendment to reduce the types of offenses subject to jury trial by lowering the maximum sentence for certain first-degree felonies. Examples of such first-degree felonies for consideration are Use of Offensive Weapon, Piracy, Perjury with Intent to Cause the Conviction of Any Person for Any Crime Punishable by Death, Misprison of Treason, and Treason Felony.

***iv. Expanding the Database for Preparing Juror Lists***

All persons above 18 years vote and their names and other personal information are captured on the voters' register. Also, all persons with driving licenses have their details with the Ghana Drivers and Vehicle Licensing Authority. These are the two most reliable ways of finding eligible jurors. However, this only provides a limited pool, since many people may be not be captured on these lists because not everyone above 18 years drives or would be in possession of a driver's license. Also, not every eligible voter actually registers to vote.

***v. Tightening of Regulations Regarding Jury Excusals***

Employers should not be given the opportunity to pick and choose which of their employees to release for jury service. It should be treated as a national call

and prospective jurors should be contacted directly as a matter of duty and sanctions imposed on failure to respond to the call of duty.

***vi. Allowing Citizens Who Only Speak a Local Language to Serve on the Jury***

The position in Ghana now is that only persons who are literate in English are eligible to serve as jurors. This therefore disqualifies a lot a people due to the fact that a majority of Ghanaians are illiterates in English. Allowing all persons to participate in the judicial system as jurors will expand the jury pool and create a more balanced system of representation.

***vii. Increased Instructions From Judges to Jury During Trial***

The situation prevailing at present is that judges are required to instruct the jury only at the summing up stage of trial. But it is recommended that in addition to summing up, the jury is given instructions at the beginning of the trial and when necessary, during the trial.

The proposals above for the modification of the jury system would respond to the needs of the people. Jury trial should not be abolished in Ghana but should be modified to respond to the problems of the contemporary criminal justice system, which is not static but dynamic and affected by changes in society.